

Application No. 09/741,437
Atty. Dkt. No. 054707-0164

REMARKS

I. Disposition of the Claims

Claims 1-5 and 63-68 are pending. Claims 6-62 were previously canceled. Claims 1-3, 5, and 63-68 are rejected. Claims 4 and 66 are objected to. Claims 67-68 have been withdrawn but should be rejoined when claim 1 is allowable. Claims 1-2 and 5 are currently amended, support for which is believed apparent.

II. Response to Statement of Non-responsiveness

The present action stated that the amendment failed to comply with Rule 121 because claims 67-68 were indicated as "previously presented" rather than "withdrawn." The present paper changes the status identifier of these claims. Yet there is no requirement in the rules to do so.

Rule 121(c), in relevant part, reads: "In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: ... (Withdrawn), (Previously presented)," The rule does not tell applicant which identifier to use when both "withdrawn" and "previously present" are appropriate. Therefore, either choice may be used to indicate "one" status of the claim.

In the present case, either choice was available. Previously present was used. Applicants should not be found to have made an inappropriate choice.

Furthermore, the 68 Fed. Reg. 38617 (June 30, 2003), part of the notice announcing current rule 121, in relevant part reads: "[t]he status identifier 'previously presented' must be used in those circumstances where: (1) A claim has been previously presented as 'new' in a prior amendment document and the entry of the claims is certain..." (col. 1). In this case, claims 67-68 were "new" in the amendment filed February 4, 2003, an amendment entered as a matter of right. Thus, the "previously presented" status identifier seems like an appropriate choice.

In summary, the notice of non-responsiveness is inappropriate and should be withdrawn.

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Conclusion

Each claim is believed to be in condition for allowance. Favorable reconsideration is respectfully requested. The Examiner is invited to contact the undersigned attorney by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 07-08-2004

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